Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I.   Claims 1-27, drawn to an apparatus for sensing temperature and establishing a temperature set point based on the placement of an interaction element with relation to a coil of wire, classified in class 236, subclass 1C.

II.   Claims 28-32, drawn to a method for sensing the resistance and inductance of a coil of wire to establish a setpoint based on the inductance and sense temperature based on the resistance, classified in class 236, subclass 46R.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another and materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case process of group 1 could operate for a method different from that of group II, such as a method in which the resistance and inductance are measured only at one time and then compared to stored values rather than being measured twice as in the method of group II.

A telephone call was made to Attorney Donald Hill on 19 October 2009 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Basis for Restriction

Examiner notes that applicant's US filing date (19 March 2007) is more than 18 months after the filing of the corresponding International Application filed under the Patent Cooperation Treaty (PCT/BR04/00232 filed 24 November 2004) and that, as such, the above restriction requirement has been made under the US practice as outlined in 35 U.S.C 121 rather than under the requirement for Unity of Invention as set forth in Rule 13 of the Patent Cooperation Treaty.

Should applicant disagree with this determination, examiner requests that any appropriate remarks and arguments to this effect be submitted with applicant's reply to this restriction requirement.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel C. Comings whose telephone number is 571-270-7385. The examiner can normally be reached on Mon-Fri 8:00-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz Jules or Cheryl Tyler can be reached on 571-272-6681 or 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Daniel C Comings/
Examiner, Art Unit 3744
20 October 2009

/Frantz F. Jules/
Supervisory Patent Examiner, Art Unit 3744